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Letter dated 22 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fourth report from the Philippines submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 11 February 2005 from the Permanent Representative of the Philippines to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to your letter dated 8 October 2004, enclosed is the fourth country report of the Philippines on the implementation of resolution 1373 (2001) (see enclosure).

(*Signed*) Lauro L. **Baja, Jr.**
Permanent Representative

Enclosure*

FOURTH REPORT ON PHILIPPINE ACTION AND INITIATIVES AGAINST DOMESTIC AND INTERNATIONAL TERRORISM

A Report in Compliance with paragraph 6 of UN Security Council Resolution 1373 (2001)
January 2005

I. OVERVIEW

The Philippine government condemns all acts of terrorism and strongly adheres to the basic ideals of democracy, individual freedom and the rule of law. Its strategy to combat terrorism involves: (1) preventing an attack from occurring, (2) preparing national, local, private sector and non-governmental capabilities to respond to an attack and (3) addressing the political social and economic underpinnings of terrorism. For an effective implementation of the strategy, a comprehensive legal framework is needed to prevent terrorist acts from happening and to bring perpetrators to justice.

The Fourth Report on Philippine Action and Initiatives Against Domestic and International Terrorism gives a summary of bilateral and regional agreements entered into by the Philippines for the year 2004 to combat terrorism, as well as an outline of the pertinent provisions of proposed anti-terrorism bills now pending in Congress and how they address implementation measures required by UNSC 1373.

II. BILATERAL COOPERATION

Conduct Of Joint RP-Us Naval Exercises In Zambales And Cavite

In August 2004, naval training exercises between the Philippine and US navies under the combined bilateral exercise dubbed as "Cooperation Afloat Readiness and Training (CARAT) 2004" were successfully conducted in Zambales and Cavite provinces in the Philippines. The Mutual Defense Treaty-Visiting Forces Agreement (MDT-VFA) related joint RP-US naval exercise CARAT 04 commenced on 27 July 2004 and concluded on 04 August 2004. The exercises were conducted at various training sites in Zambales and Cavite provinces with the primary objective of enhancing the interoperability between the participating forces of the Philippine Navy and the US Navy to meet any security threat at sea including terrorism. The main exercise events were:

1. Fleet exercise
2. Naval aviation training
3. Naval special warfare exercise
4. Naval diving and salvage exercise
5. Naval symposium
6. CMO/ COMREL activities

With its conclusion, the Philippine Navy has acquired additional individual knowledge and skills on the operation of various modern naval systems and equipment important to

* Annexes are on file with the Secretariat and are available for consultation.

its anti-terrorism campaign. Proficiency in combined naval planning operations was also enhanced. These joint-military exercises which also promoted friendship and strengthened the relationship between the military personnel of US and the Philippines demonstrated the Philippines' continuing strong commitment to the fight against terrorism by enhancing the capabilities of its military and by strengthening its bilateral relations with the United States.

Philippines And Spain Sign Treaties On Extradition And Mutual Legal Assistance On Criminal Matters

In March 2004, two significant treaties between the Philippines and Spain, namely the Treaty on Extradition and the Treaty of Mutual Legal Assistance on Criminal Matters, were signed. The Philippines-Spain Extradition Treaty will facilitate the exchange of wanted criminals from the country where they are found and will prevent criminals from escaping punishment by fleeing to the country of the Contracting Party. The Philippines-Spain Treaty on Mutual Legal Assistance on Criminal Matters, on the other hand, is envisioned to improve the effectiveness of judicial assistance as well as to regularize and facilitate its procedures in both countries. It is envisioned to enhance cooperation between the two countries in their common fight against transnational crimes, in particular, terrorism and to facilitate cooperation on legal matters involving citizens of both countries.

III. REGIONAL AND MULTILATERAL COOPERATION

Regional Cooperation on Anti-Piracy in Asia (ReCAAP)

The Philippines, through the Maritime and Ocean Affairs Center (MOAC) of the Department of Foreign Affairs, participated in the Governmental Experts Working Group (GEWG) Meeting for the formulation of the Regional Cooperation Agreement on Anti-piracy in Asia (ReCAAP). During this 7th GEWG Meeting in Tokyo on 11 November 2004, the draft text of the ReCAAP was adopted, and Singapore won the bid to host the Information Sharing Center.

MOAC has already convened the Country Team on Maritime Security on 17 November 2004 and discussed the domestic requirements in conformity with RECAAP. The country team aims to come up with a finalized National Action Plan on Piracy and Sea Robbery Against Ships for Submission to Congress early next year.

1st ASEAN +3 Ministerial Meeting on Transnational Crime (AMMTC +3)

The 1st ASEAN +3 Ministerial Meeting on Transnational Crime (AMMTC +3) was held on 10 January 2004 in Bangkok, Thailand. The meeting agreed on measures to coordinate more effectively the efforts of ASEAN Plus Three Countries (China, Japan and Korea) in combating transnational crime, especially counter-terrorism.

In the same meeting, ASEAN and China concluded a Memorandum of Understanding to Implement their Joint Declaration in the field of Non-Traditional Security Issues. They also adopted an Annual Work Programme to realize the objectives of the MOU.

Foundation Course for Senior Officials in the Theory of Counter-Terrorism Recognition and Multilateral Collaboration for Combating Terrorism.

On 12 February 2004, the Australian Agency for International Development (AUSAID), in cooperation with the ASEAN Secretariat, began the Foundation Course for Senior Officials in the Theory of Counter-Terrorism Recognition and Multilateral Collaboration for Combating Terrorism. The project is aimed at enhancing the skills of senior law enforcement officials in each ASEAN Member country. These all fit into the Philippines' counter-terrorism efforts.

ASEAN Joint Declarations for Cooperation to Combat Terrorism with Russia and Australia

The Joint Declarations for Cooperation to Combat Terrorism with Russia and Australia were signed during the ASEAN Post Ministerial Conference 10+1 Sessions with Russia and Australia on 1 July 2004 in Jakarta, Indonesia in the fight against terrorism.

ASEAN Joint Declarations for Cooperation to Combat Terrorism with US, India and the EU

At the 37th ASEAN Ministerial Meeting in Jakarta Indonesia on 29-30 July 2004, the ministers looked forward to the implementation of the Joint Declarations for Cooperation to Combat Terrorism with the US, India and the EU.

ASEAN Regional Forum (ARF) Seminar on Cyber-terrorism

The Philippine delegation to the ASEAN Regional Forum (ARF) Seminar on Cyber-terrorism supported initiatives that would advance Philippine interests, including, a networking of CERTs (Computer Emergency Response Teams) or similar focal points, capacity building particularly in the area of training law enforcement officials on computer-related terrorism, and the holding of regular forums to discuss cyber-terrorism.

The Seminar, which was held in Jeju, Republic of Korea on October 13-16, 2004, was co-chaired by the Philippines together with the Republic of Korea. About 90 participants from 22 ARF member countries and organizations attended the meeting, the first of its kind held under the auspices of the ASEAN Regional Forum. The ARF Seminar on Cyber-terrorism was held in compliance with the 11th ARF Ministerial Meeting directive to intensify regional cooperation against terrorism. The meeting heard country reports on ARF member countries' preparedness to cope with computer related emergencies such as hacking and the various uses of cyberspace to inflict damage to critical infrastructure as well as advance the cause of terrorism. It was noted in the meeting that terrorists could use cyber space to inflict damage to critical infrastructure at very little cost and at no

danger to the perpetrators. They also could use it to publicize their propaganda, send out instructions and recruit new members.

Election of Philippines As Head of APEC Counter-Terrorism Task Force

The Philippines was unanimously elected as the new chair of the Counter-Terrorism Task Force (CTTF) of the Asia Pacific Economic Cooperation (APEC) in November 2004. As CTTF chair, the Philippines will coordinate APEC's work on securing trade in the Asia-Pacific region and its various projects on counter-terrorism capacity building.

The Philippines will serve as CTTF chair for two years, from 2005 to 2006, with Chile, as vice chair. Indonesia and Japan served as chair and vice chair, respectively, from 2003 to 2004. The main tasks of the CTTF are:

- Coordinate the implementation of the APEC Leaders' various counter-terrorism initiatives;
- Assist Member Economies in identifying and assessing counter-terrorism needs;
- Coordinate capacity building and technical assistance programs, including through consultations with international financial institutions;
- Cooperate with various international organizations in implementing APEC Leaders' statements on counter-terrorism; and
- Facilitate cooperation between APEC working groups on counter-terrorism issues and recommend projects to APEC Senior Officials.

APEC, established in 1989, groups together 21 Member Economies, namely: Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, the United States, and Vietnam.

IV. DOMESTIC EFFORTS

Executive Orders Signed

Executive Order No. 265 dated 23 January 2004 - Defining the Approach and Institutional Mechanism for the Government's Comprehensive Program on Combating Transnational Crime

Executive Order No. 311 dated 26 April 2004 - Designating the Office for Transport Security as Singular Authority Responsible for the Security of the Transportation Systems of the Country, Expanding its Powers and Functions as an Attached Agency under the Department of Transportation and Communications.

Creation of the Anti-Terrorism Task Force (ATTF) on 25 March 2004 under the Cabinet Oversight Committee on Internal Security (COC-IS) tasked as the primary government entity to fight terrorism with the Secretary of National Defense designated by the President to spearhead the task force. Pursuant to Administrative Order No. 104,

Series 2004, dated 7 September 2004 issued by the President, COC-IS was abolished thereby also abolishing ATTF under it. Realizing the importance of ATTF's mandate and salient functions in fighting terrorism, ATTF was reconstituted by virtue of a memorandum issued by the president on 22 September 2004. The ATTF is now directly under the Office of the President with the Executive Secretary as the Chairman who exercises oversight functions on operations among various law enforcement agencies such as the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), the National Bureau of Investigation (NBI), and the National Intelligence Coordinating Agency (NICA), under the task force.

The National Security Adviser (NSA) who serves as ATTF Vice-Chairman exercises operational and monitoring functions as the National Coordinator for the task force. The end objective of ATTF is a well coordinated, effective government action for the destruction of terrorist groups and their capabilities.

On 05 October 2004, the NSA issued Intelligence Directive No. 1, Series of 2004, which defines the duties and responsibilities of concerned agencies in the country's anti-terrorism program. The directive also designated offices for the four identified functions of the ATTF as follows:

- Monitoring and Operations - National Security Monitoring Center/ NSC
- Data base - Counter-Terrorism Intelligence Center/NICA
- Coordination - Information Management office/ NSC and Philippine Center for Transnational Crimes; and
- Policy Oversight – Policy and Strategy Office/NSC

The NSA has also outlined an organizational structure, which encompasses all the vital aspects of the force including the creation of directorates that will handle the following:

- Intelligence Fusion and Database
- Policy and Strategy
- Information Management and Coordination
- Legal/Public Information and Advocacy
- Finance and Administrative Support

The structure is aimed to ensure effective flow of coordination and communication between and among member-agencies, as well as with the Chairman and the Vice-Chair of ATTF through effective link-up provided by a Monitoring and Coordinating Center.

ATTF will initially be focusing on the following programs:

- Sustained capability build up
- Attainment of a strategic inter-agency network in Anti-terrorism
- Support for Regional and International Anti-Terrorism Programs
- Development of both Anti-terrorism and terrorist based disaster consequence management preparedness program.

The ATTF has already acquired nine (9) Armed Forces of the Philippines (AFP) personnel erstwhile detailed at the Department of National Defense (DND). Member agencies, particularly the Philippine National Police (PNP) and the AFP have netted a total of ninety eight (98) neutralized terrorists for the period of 25 March 2004 – 27 November 2004.

Bills and Laws

The following were the Proposed Anti-terrorism bills which were included in the 3rd country report of the Philippines:

A. House Bills

i) **House Bill No. 3802** – a proposed anti-terrorism act which authorizes regional trial courts to issue freeze orders on any deposit or similar account which is in any way related to acts of terrorism. It also authorizes courts to issue order of forfeiture of property.

ii) **House (not Senate) Bill No. 5923** - Anti-Terrorism Act of 2003

House Bills 3802 and 5923 were filed at the House of Representatives during the 12th Congress. They had already passed the third and final reading but were not passed into law, having been overtaken by the local and national elections in May 2004. **House Bill No. 309**, entitled "***An Act Defining Terrorism, Providing Penalties Therefor, And For Other Purposes***" otherwise known as "Anti-Terrorism Act of 2004", however, which has essentially the same provisions as those found on House Bill 3802, was filed at the House of Representatives, together with the following anti-terrorism bills, at the 13th Congress which convened last June 2004:

1. **HB 223** ***"An Act Establishing A Rewards For Information Concerning Terrorism Program And Appropriating Funds Therefor,"*** **otherwise known as** ***"Rewards for Information Concerning Terrorism Act."*** The bill which was filed on 01 July 2004 seeks to provide a reward system for persons who provide information leading to the arrest or prosecution of terrorists or the prevention of terrorist acts.

2. **HB 948** ***"An Act Declaring Terrorism As Heinous Crime, Amending For The Purpose The Revised Penal Code, As Amended, Providing For The Penalties Therefor And For Other Purposes" also known as "Anti-Terrorism Act".*** The bill filed on 01 July 2004 defines terrorism as the systematic use of terror, intense fear, violence, bombing committed by a group as a means

of coercion and to intimidate a population or government into granting their demands.

3. **HB 1925** ***An Act To Prevent And Penalize Acts Of Terrorism And and for Other Purposes" also known as "Anti-Terrorism Act of 2002."*** The bill filed on 29 July 2004 defines terrorism as a "cause, attempt or threat of destruction of properties or death by showing terror to the public, disturbing peace and order internationally or domestically due to ideological, political, religious, ethnic, or cultist belief."

4. **HB 2222** ***"An Act Defining Terrorism, Providing Penalties Therefor And For Other Purposes" also known as "Anti-Terrorism Act of 2004"*** the bill filed on 09 August 2004 defines and punishes the act of terrorism. It states that terrorism is committed by any person or group of persons, who, with the intent of creating a common danger, terror, panic, or chaos to the public or any segment thereof, commits any of the following felonies and/or acts: 1) murder, homicide, serious physical injuries, less serious physical injuries, kidnapping and serious illegal detention, grave threats, and grave coercions; 2) arson; 3) threatening to inflict substantial damage or actually inflicting damage to infrastructures or property used as a public utility; 4) manufacture, possession, acquisition, transport, supply, use or sale of explosives, biological agent, chemical agent, nuclear weapon, materials or equipment and instruments; 5) attacking or threatening to attack, or committing any other unlawful acts against networks, servers, computers, and other information and communications systems; and 6) willful destruction of natural resources, such as forest and marine resources, oil spillage, and other similar acts of destruction of the environment that threatens ecological security

5. **HB 2380** entitled ***An Act Defining Terrorism, Providing Penalties Therefor And For Other Purposes also known as "Anti-Terrorism Act of 2004."*** The bill filed on 12 August 2004 defines terrorism, terrorist acts and provides penalties therefor.

6. **HB 2615** entitled ***"An Act To Deter And Punish Terrorist Acts, To Enhance Law Enforcement, To Authorize Pen Registers And Trap And Trace Under Certain Conditions And For Other Purposes," otherwise known as "Peace Act of 2004"*** the bill filed on 24 August 2004 defines the offense of terrorism and provides penalties therefore. It allows court authorized wiretaps in terrorism investigations and wiretaps without court authorization in cases of consensual monitoring.

7. **HB 2621** entitled, ***"An Act Defining Terrorism, Establishing Institutional Mechanism To Prevent And Suppress Its Commission, Providing Penalties For Its Violations And For Other Purposes also known with the title "Anti-Terrorism Act Of 2004".*** The bill filed 24 August 2004 defines the crime of terrorism and establishes a mechanism for its suppression and the prevention of its commission. It provides for the creation of an Anti-Terrorism Council which shall serve as the central policy-making coordinating and monitoring body on all matters of domestic and international terrorism.

8. **HB 3032** entitled ***"An Act To Define And Penalize Acts Of Terrorism And For Other Purposes" also entitled "Anti-Terrorism Act of 2004."*** The bill filed 23 September 2004 defines "terrorism" and how it is committed. It provides the penalties for the commission of the act of terrorism, conspiracy to commit acts of terrorism, participation in any act of terrorism, financing or materially supporting any act of terrorism, harboring or concealing a terrorist and for making false threats of acts of terrorism.

9. **HB 3103** entitled, ***"An Act Declaring Terrorism As Heinous Crime, Amending For The Purpose The Revised Penal Code, As Amended, Providing For The Penalties Therefor And For Other Purposes.*** The bill filed on 18 October 2004 declares the act of terrorism as a heinous crime punishable by death.

House Bill 2380 (No. 5 on list) has been adopted by the Technical Working Group (TWG) of the Anti-Terrorism Task Force of the Philippines (ATTF) as the version to endorse. This was also the version prepared by the Philippine Center on Transnational Crime. Provisions of the draft Anti-Terrorism bill being endorsed by the TWG include :

SECTION 6. Participation, Facilitation, Contribution to Any Terroristic Activity. *– Any person who knowingly participates in, facilitates or contributes to any terroristic activity shall suffer the penalty of imprisonment for a period of not less than twelve (12) years but not more than twenty (20) years and a fine of five (5) million pesos (Php 5,000,000.00) to ten (10) million pesos (Php 10,000,000.00). Participating in, facilitating of or contributing to a terrorist activity includes:*

1) Establishing or maintaining or serving as, contact or link with any person or persons that are known to have pursued or are pursuing terrorist activities;

2) Arranging or assisting in the conduct of meeting of two(2) or more persons, knowing that the meeting is to support or further the terrorist activities;

3) Providing training to any person or persons to carry out terrorist activities;

4) Providing or offering to provide a skill or an expertise in furtherance of terrorism;

5) Recruiting in order to facilitate or commit -

a) an offense under this Act; or

b) an act or commission outside of the Philippines that, if committed in the Philippines would be an offense under this Act;

6. Entering or remaining in the Philippines in furtherance of terrorism and

7. Providing or soliciting financial or material support for the commission of terrorists acts;

8. Harboring or concealing any person whom he knows or has reliable grounds to believe, to be the person who carried out or is likely to carry out terrorist activity.

SECTION 8. Failure to Disclose Acts of Terrorism. *– Any person, who, having knowledge or information of any acts punished under this Act, conceals or does not disclose and makes known the same, as soon as possible to the government or any of its authorized agencies, shall suffer the penalty of imprisonment of not less than six (6) months but not more than six (6) years and a fine of fifty thousand pesos (Php 50,000.00) to one hundred thousand pesos (Php 100,000.00).*

SECTION 16. Mutual Assistance and Cooperation Between the Philippines and Other States of International Organizations. *– When a foreign State or International Organization makes a request for assistance concerning any matter related to any act of terrorism, the Council as created under Section 25 of this Act shall take the appropriate action on the matter, provided that such request of the Philippine government to a foreign State of International Organization shall be coursed through the Council.*

B. Senate Bills

i) **Senate Bill No. 1980** or the proposed "*Anti-Terrorism Act*" which authorizes inquiry into all kinds of bank deposits

ii) **Senate (not House) Bill No. 1458** which proposes the creation of an "*Anti-Terrorism Council*"

iii) **Senate Bill 2540** - Anti-Terrorism Act of 2003

Senate Bill 2540 was filed in substitution of Senate Bill Nos. 1458 and 1980. Senate Bill 2540 reached the 2nd reading in January 2004 and was pending schedule for further joint public hearing when national elections were held in May 2004. Last August 2004, the proponent of Senate Bill 1458 re-filed his anti-terrorism bill, now designated as **Senate Bill No. 831**, entitled "***The Anti-Terrorism Act Of 2004***" at the Philippine Senate for the 13th Congress. The bill essentially reproduces the provisions contained in Senate Bill 1458 which penalizes conspiracy to commit terrorism, when two or more persons agree to commit the crime. It holds responsible the owner, lessee, caretaker, administrator, superintendent or occupant of a land, room, house or building as safehouse or assembly area or as meeting, planning or hiding place. Participation in the preparation for planning, establishing, or serving as link with domestic or foreign terrorist organization; gathering information on potential targets; making implements or equipment; transporting materials; providing material support, safehouse, transportation, communications, funds, forged passports, documentation or identification for terrorist, procuring weapons and spare parts; providing training; soliciting funds, food, medicine; protecting any terrorist shall be prima facie evidence for conspiracy to commit terrorism. The bill allows law enforcers to conduct electronic surveillance of suspected participants or perpetrators of terrorism, conspiracy, or membership. The bill also allows the courts to authorize peace officers to examine deposits if there is reasonable ground to believe the depositor is engaged or is about to engage in terrorism, conspiracy, or membership. Finally, the bill calls for the formation of an anti-terrorism council with the justice secretary as chairman.

Senate Bill No. 1768 was filed on September 2004 during the 13th Congress which has essentially the same provision found in Senate Bill 1980 authorizing inquiry into all kinds of bank deposits. Section 8 of Senate Bill 1768 reads:

> *Section. 8. Authority to inquire into all kinds of bank deposits. - Any provision of the law to the contrary notwithstanding, inquiry into peso or foreign currency bank deposits of suspected terrorists, or terrorists organizations or associations, local or international, may also be had pursuant to the provisions of Section 7 herein where there is sufficient ground to believe that sums of money are being laundered to finance acts of terrorism.*
>
> *Any provision of the law to the contrary notwithstanding, upon finding of such sufficient ground as determined by the appropriate Regional Trial Court, such bank deposits shall automatically be devoid of secrecy and shall be made available for investigation and prosecution process.*

Aside from Senate Bills 831 and 1768, new anti-terrorism bills filed in the Senate for the 13th Congress include:

1. **Senate Bill 735** entitled *"Anti-terrorism Act of 2004"*, which defines the crime of terrorism and establishes a mechanism for its suppression and the prevention of its commission. It penalizes serious interference with or serious disruption of an essential service, including the mass transmission of virus in the internet, and provides for the creation of an Anti-Terrorism Council which shall serve as the central policy-making coordinating and monitoring body on all matters of domestic and international terrorism.

2. **Senate Bill 871** entitled *"An Act to Define and Penalize Acts of Terrorism and for Other Purposes" otherwise known as "Anti-Terrorism Act of 2004,"* seeks to define acts constituting terrorism and imposes the penalty of life imprisonment to death. It also provides for the creation of an Anti-Terrorism Council which shall serve as the central policy-making coordinating and monitoring.

3. **Senate Bill 1736** entitled, *"An Act defining the crime of Terrorism and the Financing, Preparation and Facilitation of Acts of Terrorism, Providing Penalties therefore and for Other Purposes,"* or the *"Anti-terrorism Act of 2004."* The bill criminalizes terrorism, the financing of terrorism, membership in a terrorist organization and other similar acts. It provides for mutual assistance and cooperation between the Philippines and other states or International Organizations.

Implementation Measures

It is duly noted that the CTC, in reference to its letter of 16 May 2003 would want to know whether the pieces of legislation [filed during the 12th Congress] address the observations it raised pertaining to implementation measures. Considering, however, that the proposed bills during the 12th Congress have not been passed into law, and considering that the proposed bills which were recently filed during the 13th Congress essentially contain similar provisions to those filed during the 12th Congress, answers/clarifications made to the questions propounded are in the context of how the proposed bills now pending at the 13th Congress address the observations raised in the letter of 16 May 2003.

Concerning Question 1.2

Provisions in the proposed bills which would criminalize the willful provision or collection of funds by its nationals in its territory, by any means, directly or indirectly, with the intention that the funds should be used in order to carry out a terrorist offense are similarly worded in this wise:

It shall be unlawful for any person, group, organization or entity to knowingly provide properties or finances, or possess them for the commission of terrorism as defined in the bill or facilitate in any way the provision or possession of such properties or finances, and it shall carry with it the penalty of imprisonment and a fine [of ten million pesos (Php 10,000.000.00)]. It also penalizes any person who knowingly solicits or invites financial contribution or support for the commission of terrorism as defined in the bill, with a penalty of imprisonment [of ten (10) years and one day (1) day to fifteen (15) years] and a fine [of five million pesos (Php 5,000.000.00)].

There is, as yet, no existing law or proposed bill to adequately meet the requirements that acts sought to be criminalized would include cases where:

- The only related terrorist act takes place or is intended to take place outside the country
- No related terrorist act actually occurs or is attempted
- No transfer of funds from one country to another takes place; or
- The funds are of a legal origin.

Concerning Question 1.3

The Anti-Money Laundering Law of 2001 or Republic Act No. 9160 (RA 9160), enacted on September 29, 2001, and amended by Republic Act No. 9194 holds a person engaging in money laundering or any act which facilitates the same criminally liable. Under said law, banks, non-banks, quasi-banks, trust entities, insurance companies, securities dealers, *brokers*, salesman, investment houses and such other similar entities have the duty to establish and record the true identity of their clients based on official documents. Covered institutions and their *officers and employees*, under the law, are required to report covered and suspicious transactions, the covered institution is also required to report the same as a suspicious transaction. They are likewise required to report to the Anti-Money Laundering Council (AMLC) any single, series or combination of transactions involving total amount in excess of P500,000.00 or an equivalent amount in foreign currency, within five (5) working days, unless the Supervising authority prescribes a longer period not exceeding ten (10) working days, from the transaction by a client who is not properly identified and whose business or financial capacity does not support the amount involved, or which has no obligation, credible purpose, origin or economic justification. Failure of such entities to comply with their duties under R.A. No. 9160 makes the concerned officer, employees, representative, agent or associate thereof criminally liable. The AMLC, composed of Banko Sentral ng Pilipinas Governor, Securities and Exchange Commission Chairman and Insurance Commissioner, is vested with the power to initiate investigation of any activities in violation of R.A. No. 9160 and to cause the filling of the appropriate complaint with the Department of Justice. It also

has the power to institute civil forfeiture proceeding against or freeze any monetary instrument or property that is alleged to be the proceeds of an unlawful activity.

Concerning Question 1.4

There is no specific measure to ensure that funds collected by organizations which claim to have charitable, social and/or cultural goals are not diverted to purposes other than their stated purposes. However, relevant provisions of pending anti-terrorism bills penalize the provision or solicitation of financial or material support for the commission of terrorists acts. It is submitted that these provisions would amply cover the required measures to ensure that funds collected by organizations which claim to have charitable, social and or cultural goals are not diverted to other purposes that their stated purposes. Moreover the Anti-Money Laundering Law of 2001 as amended by R.A. No. 9194 provides for a definition of 'suspicious transaction' as transactions with covered institutions, regardless of the amounts involved, where any of the following circumstances exist:

xxx

"5. *any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered institution*;

"6. the transaction is in any way related to an unlawful activity or offense under this Act that is about to be, is being or has been committed; or

"7. any transaction that is similar or analogous to any of the foregoing."

Concerning Question 1.5

There is, as yet, no pertinent law or proposed bill which regulates alternative money transfer agencies.

Concerning Question 1.6

Section 9 of Senate Bill 831 provides that when a court is reasonably convinced that the crime of terrorism or conspiracy to commit terrorism has been or is about to be committed, or that *a depositor in a bank or financial institution is a member of a terrorist organization, and that the deposit of money, marketable securities or shares of stock, or precious metals with the bank or financial institution is being used or about to be used to support such terrorism or conspiracy to commit terrorism or terrorist organization*, the court may upon written application by the Secretary of Justice or by his duly authorized representative, grant or issue a written order directing the bank or financial institution where such deposit is held not to release any portion of the money, marketable securities

or shares of stock, or precious metals to the depositor or the depositor's agent or representative.

It is submitted that the afore-cited provision of the proposed bill would meet the requirement of freezing of funds held in the names of persons and entities identified in lists such as those approved for purposes of Security Council Resolution 1267 (1999) as being linked to terrorist activities, or suspected of being linked to terrorists but not yet used for the commission of terrorist attack or held in the names of persons and entities other than in lists, such as those approved for purposes of Security Council Resolution 1267 (1999), as being linked to terrorist activities.

Concerning Question 1.7

The draft anti-terrorism bill to be endorsed by the TWG of the Philippine Anti-Terrorism Task Force contains a provision on participation, facilitation, contribution to any terroristic activity. The provision states :

> *"Any person who knowingly participates in, facilitates or contributes to any terroristic activity shall suffer the penalty of imprisonment for a period of not less than twelve (12) years but not more than twenty (20) years and a fine of five (5) million pesos (Php 5,000,000.00) to ten (10) million pesos (Php 10,000,000.00) Participating in, facilitating of or contributing to a terrorist activity includes:*
>
> *5) Recruiting in order to facilitate or commit -*
> *a) an offense under this Act; or*
> *b) an act or commission outside of the Philippines that, if committed in the Philippines would be an offense under this Act;*

It is submitted that said provision which penalizes facilitation of or contribution to any terroristic activity would address the problem of recruitment activities carried by means of deceit (e.g. putative purpose of recruitment different from its true purpose) or by persons who do not belong to a criminal or terrorist organization.

Concerning Question 1.8

House Bill No. 1925 and Senate Bill 1768 provide for immediate refusal of entry into the Philippines of a foreign national suspected of being involved in an act of, conspiracy to commit or proposal to commit terrorism. Senate Bill 1768 further states that a foreign national is a suspect if he or she is known to be a member of any terrorist organization or association or has been involved in any terrorist activities.

It is submitted that the aforesaid provisions of the proposed bills would address the requirements of the resolution regarding denial of safe havens to terrorists.

Concerning Question 1.9

The proposed Anti-Terrorism Bills (Senate Bill Nos. 735, 871 and 1736 as well as the proposed House Bill being endorsed by the ATTF) have widened the scope of offenses to include preparatory acts such as

a) establishing or maintaining, or in serving as, contact or link with any person or persons that are known to have pursued or are pursuing terrorist activities;
b) Procuring weapons, bombs, explosives, devices, spare parts, and other accessories thereof
c) Providing training to any person or persons to carry out terrorist activities; or
d) Arranging or assisting in the conduct of a meeting of two (2) or more persons, knowing that the meeting is to support or further terrorist activities.

The bills (specifically Senate Bill Nos. 735, 871, 1736; and House Bill Nos. 309, 2380) also penalize any person, group, organization or entity to knowingly provide properties or finances, or possess them for the commission of terrorism as defined in the bill or facilitate in any way the provision or possession of such properties or finances, with the penalty of imprisonment and a fine. Senate Bills 735, 1736 and House Bill 309 and 2380 also penalize any person who knowingly solicits or invites financial contribution or support for the commission of terrorism as defined in the bill, with a penalty of imprisonment and a fine.

Finally, the proposed bills (senate Bill 871, 1736) penalize any person who harbors or conceals any person whom he/she knows to be a person who has carried out or is about to carry out a terrorist activity with an imprisonment of and a fine *[(penalty of fine provided for is 10 years and 1 day to 15 years and a fine of five million pesos (Php 5,000,000.00)]*.

It is submitted that the provisions of the proposed bills would adequately address the question regarding widening the scope of what are classified as terrorist activities which are penalized.

As regards competence of the courts to deal with preparations for terrorist acts, inasmuch as the proposed anti-terrorism bills penalize acts preparatory to the commission of terrorism, a warrant of arrest may be issued by the courts for individuals suspected of having committed an act which is considered as preparatory to the commission of terroristic activity. It might also be worthy to note at this point that a Draft Rule of Procedure in Cases of Forfeiture of Monetary Instrument, Property or Proceeds Representing, Involving, Or Relating to An Unlawful Activity or a Money Laundering Offense Under R.A. No. 9160 or the Anti-Money Laundering Law is already being

finalized and is expected to take effect within the first quarter of 2005. The Draft Rules of Procedure shall govern petitions filed in court for forfeiture of monetary instrument, property or proceeds representing, involving or relating to an unlawful activity or money laundering offense under R.A. 9160.

Salient provisions of the draft rules include:

A) when a petition sufficient in form and substance is filed for civil forfeiture under said law, the court shall within twenty four (24) hours from its filing issue ex parte an order effective for sixty (60) days from issuance enjoining the respondent or any person acting for and in his behalf from transacting, removing, concealing or disposing of the subject monetary instrument, property or proceeds.

> The full text of the relevant Section reads: *If the petition is sufficient in form and substance, the court shall within twenty four hours from its filing issue ex parte an order effective for sixty days from issuance enjoining the respondent or any person from transacting, removing, concealing or disposing of the subject monetary instrument, property or proceeds.*
>
> *In appropriate instances and upon motion of the petitioner, the court may order the respondent or any person in control or possession of the monetary instrument, property or proceeds to turn over the same to the petitioner or a receiver designated by the court under such terms and conditions as the court may deem proper.*
>
> *Petitioner may file an application for injunction within the aforesaid sixty day period, which shall be resolved within thirty days.*

B) when a petition is filed for civil forfeiture under said law, the subject money or property is deemed to be in custodia legis.

> Section 19 of the Rules provides: *Upon the filing of the petition, the subject monetary instrument, property, or proceeds covered by the petition shall be deemed to be in custodia legis and shall not be disposed of, withdrawn, transferred, foreclosed, attached, garnished or otherwise levied on execution in virtue of any other proceedings by any court or quasi-judicial tribunal.*

Finally, the Supreme Court, in 2004, issued Administrative Circular 04-4-197 designating special commercial courts to try and decide violations of Republic Act 9160.

Concerning Question 1.11

As mentioned, the Philippines And Spain Signed Treaties On Extradition And Mutual Legal Assistance On Criminal Matters in March 2004. The Philippines-Spain Extradition Treaty will facilitate the exchange of wanted criminals from the country where they are found and will prevent criminals from escaping punishment by fleeing to the country of the Contracting Party. The Philippines-Spain Treaty on Mutual Legal Assistance on Criminal Matters, on the other hand, is envisioned to improve the effectiveness of judicial assistance as well as to regularize and facilitate its procedures in both countries. It is envisioned to enhance cooperation between the two countries in their common fight against transnational crimes, in particular, terrorism and to facilitate cooperation on legal matters involving citizens of both countries.

There is no indication of a specific period of time under an existing domestic law, however, which would require the Philippines to give effect to a request for judicial assistance in criminal investigations or criminal proceedings relating to terrorism.

Concerning Question 1.12

It is submitted that the answer to Question 1.11 also answers the question under 1.12. In addition, provisions of proposed anti-terrorism bills (in particular, House Bill No. 309, Senate Bill Nos. 735, 871 and 1736) provide for Mutual Assistance and Cooperation between the Philippines and other States or International Organizations.

Concerning Question 1.13

The Philippines has already ratified the "Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Signed at Rome 10 March 1988." Philippine ratification was deposited with the IMO on 06 January 2004 and entered into force for the Philippines on 05 April 2004. The Philippines has likewise acceded to the Convention on the Marking of Plastic Explosives for the Purpose of Identification (Montreal Convention 1991). The Philippines acceded to the Convention on 17 December 2003 and the Convention entered into force for the country on 15 February 2004.

As earlier indicated in the report, House Bill 3802 was filed at the House of Representatives during the 12th Congress. It was not passed into law. House Bill No. 309, entitled "*An Act Defining Terrorism, Providing Penalties Therefor, And For Other Purposes*" otherwise known as "*Anti-Terrorism Act of 2004*", however, which has

essentially the same provisions as those found on House Bill 3802, was filed at the House of Representatives at the 13th Congress which convened last June 2004.

V. INTERNATIONAL TREATIES/CONVENTIONS/PROTOCOLS

Ratification of remaining Conventions and Protocols

The Philippines is party to the 12 major multilateral conventions and protocols related to states' responsibilities for combating terrorism. Among the conventions which were signed or entered into in the latter part of 2003 and in 2004 were:

1. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation Signed at Rome, 10 March 1988 – Philippine ratification was deposited with the IMO on 06 January 2004 and entered into force for the Philippines on 05 April 2004.

2. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Signed at Rome 10 March 1988 – Philippine ratification was deposited with the IMO on 06 January 2004 and entered into force for the Philippines on 05 April 2004.

3. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1971) Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation Done at Montreal on 23 September 1971 – Philippine ratification was deposited with ICAO on 17 December 2003 and entered into force for the Philippines on 16 January 2004

4. International Convention for the Suppression of Terrorist Bombings – Philippine instrument of ratification was deposited with the UN Secretary General on 07 January 2004 and entered into force for the Philippines on 06 February 2004

5. Convention on the Marking of Plastic Explosives for the Purpose of Identification Signed At Montreal, On 1 March 1991 (Montreal Convention 1991) – The Philippines acceded to the Convention on 17 December 2003 and the convention entered into force for the country on 15 February 2004.

6. International Convention for the Suppression of the Financing of Terrorism Philippine instrument of ratification was deposited with the UN Secretary General on 07 January 2004 and entered into force for the Philippines on 06 February 2004

Implementation of the provisions of the International Instruments into the Domestic Laws of the Philippines:

1. **Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.**

The proposed Anti-terrorism bill sought to be endorsed by the ATTF at the House of Representatives contains the following provision:

SECTION 4. Terrorism; How Committed. *– Terrorism is committed when any person or group of persons creates or sows a common danger or a state of terror, fear, panic or chaos, or coerces or intimidates the public or the government, through actual or threatened use of force by any of the following:*

x x x Killing of, or violent attack upon, an internationally protected person or upon the liberty of such person in violation of the Convention on the Protection and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, and other international agreements;

2. **International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997**

   - ***P.D. No. 1866 as amended by R.A. 8294*** *entitled, "Decree Codifying the laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunitions or Explosives."*

   The law penalizes the unlawful manufacture, sale, acquisition, disposition or possession of explosives.

3. **International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.**

   - ***Enactment of the R.A. 9160 or the Anti-Money Laundering Act of 2001 as amended by R.A. No. 9194***

   [A copy of RA 9160 was already submitted in previous reports]

4. **Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970.** *(Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America*

   - Republic Act No. 6235 dated 19 June 1971 entitled "An Act Prohibiting Certain Acts Inimical to Civil Aviation"

The anti- hijacking law penalizes any person who compels a change in the course or destination of an aircraft of Philippine Registry, or to seize or usurp the control thereof, while it is in flight. An aircraft is in flight from the moment all external doors are closed following embarkation until any of such doors is opened for disembarkation. The law also makes it unlawful for any person to compel an aircraft of foreign registry to land in Philippine territory or to seize or usurp the control thereof while it is in transit.

5. **Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.** *(Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America)*

*- **Republic Act No. 6235** dated 19 June 1971 entitled "An Act Prohibiting Certain Acts Inimical to Civil Aviation"*

The anti- hijacking law makes it unlawful for any person, natural or juridical, to ship, load or carry in any passenger aircraft operating as a public utility within the Philippines, any explosive, flammable or corrosive or poisonous substance or material..

6. **Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980.** *(Deposited with the Director-General of the International Atomic Energy Agency)*

*Enactment of **R.A. No. 6969** entitled "Toxic substances and Hazardous and Nuclear Wastes Control Act of 1980."*

The Act covers the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all unregulated chemical substances and mixtures in the Philippines, including the entry, even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purpose.

7. **Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.** *(Deposited with the Secretary-General of the International Maritime Organization)*

- ***Presidential Decree No. 532 dated 08 August 1974 entitled The Anti-Piracy/Anti-Robbery Law of 1974, an amendment to Article 122 (Piracy and Mutiny on the High Seas or in Philippine Waters) of the Revised Penal Code***

[A copy of P.D. 532 was already furnished in the first report]